

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEW MEXICO

UNITED STATES DISTRICT COURT

for the  
District of New Mexico

2020 JAN 14 AM 9:02

CLERK-LAS CRUCES

In the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)

Black Samsung cellular phone  
(Subject Telephone )

Case No. 20MRLPD

### APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

The Subject Telephone, more fully described in Attachment A, which is attached and incorporated herein.  
located in the \_\_\_\_\_ District of \_\_\_\_\_ New Mexico \_\_\_\_\_, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, which is attached and fully incorporated herein.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section

Offense Description

21 U.S.C 841 and 846

Conspiracy and Possession with Intent to Distribute a Controlled Substance

The application is based on these facts:

See Attachment C, which is attached and fully incorporated herein.

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

Mitchell Noel, DEA Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 1/19/20



Judge's signature

City and state: Las Cruces, New Mexico

Stephan M. Vidmar, United States Magistrate Judge

Printed name and title

**ATTACHMENT A**

**PROPERTY TO BE SEARCHED**

The affidavit, *see* **Attachment C**, is submitted in support of warrant to search and seize information, more fully described in **Attachment B**, contained in the following electronic devices (referred to in **Attachment B** and **Attachment C** as Subject Telephone (the "Subject Telephone") to include any SIM cards found in or with the Subject Telephone):

**Subject Telephone**

The Subject Telephone is described as a black Samsung cellular phone which was seized from Jesus Pena on December 11, 2019. Subject Telephone has an unknown telephone number. Subject Telephone is currently in the custody of the DEA in Las Cruces, New Mexico.



**ATTACHMENT B**

**PARTICULAR THINGS TO BE SEIZED/INFORMATION TO BE RETRIEVED**

The particular things to be seized include all records, in whatever format, stored on Subject Telephone belonging to Jesus Pena (the "Subject Telephone") described in **Attachment A** that are related to violations of 21 U.S.C. §§ 841 and 846 and which were seized from Jesus Pena on December 11, 2019, including:

1. Digital, cellular, direct connect, and/or other phone numbers, names, addresses, and other identifying information of customers, distributors, sources of supply and other associates of the user of the Subject Telephone;
2. Digital, cellular, direct connect, and/or other phone numbers dialed from, which contacted, or which are otherwise stored on, the Subject Telephone, along with the date and time each such communication occurred;
3. Text message logs and text messages whether sent from, to, or drafted on, the Subject Telephone, along with the date and time each such communication occurred;
4. The content of voice mail messages stored on the Subject Telephone, along with the date and time each such communication occurred;
5. Photographs or video recordings;
6. Information relating to the schedule, whereabouts, or travel of the user of the Subject Telephone;
7. Information relating to other methods of communications utilized by the user of the Subject Telephone and stored on the Subject Telephone;
8. Bank records, checks, credit card bills, account information and other financial records; and
9. Evidence of user attribution showing who used or owned the Subject Telephone, such as logs, phonebooks, saved usernames and passwords, documents, and internet browsing history.



**ATTACHMENT C**

**AFFIDAVIT IN SUPPORT OF ORDER AUTHORIZING  
SEARCH WARRANT**

Your Affiant, Mitchell Noel, having been duly sworn, does hereby depose and say:

1. I am a Special Agent of the Drug Enforcement Administration assigned to the Las Cruces Resident Office. As a Special Agent, I am empowered by Title 21, Section 878 of the United States Code to effect arrests, searches, and seizures for violations of the federal narcotics laws. I have been employed with DEA since May 2016, during which time I have specialized in investigations involving narcotics trafficking. I have received specialized training on the subject of narcotics trafficking and money laundering and have been personally involved in investigations concerning the possession, distribution, and importation of controlled substances, as well as methods used to finance narcotic transactions.
2. I am familiar with the facts and circumstances of this investigation as result of my personal participation in the investigation, discussions with other agents who were involved in the investigation, and review of reports written by other agents concerning the investigation. Because this affidavit is being submitted for the limited purpose of establishing probable cause, I have not included each and every known fact regarding the instant investigation. More specifically, I have set forth only pertinent facts that I believe are necessary to establish probable cause to search the Subject Telephone for evidence of violations of 21 U.S.C. §§ 841 and 846.
3. Through my training and experience, I know that narcotics traffickers often maintain one or more cellular or "smart" telephones ("devices") which they utilize to further their narcotics trafficking. Narcotics traffickers use these devices to communicate operational directives and information concerning the conduct of the organization's illegal activities to other organization members, including their suppliers, distributors and other co-conspirators. I know based upon my training and experience that timely communication of information between organizational members is critical to the overall success of an organization's illegal activities. The critical nature of this information is derived from the necessity of the organization's management to provide instructions for the importation, storage, transportation, and distribution of narcotics, as well as the subsequent laundering of the proceeds of these illegal activities.
4. I further know from my training and experience, that a cache of information including dialed, received or missed calls and text messages sent, received or placed in draft status, can be found on these devices. I know that the identities and telephone numbers of other participants in the narcotics trafficking activity are maintained in the contact lists of these devices. In my experience, narcotics

traffickers also use these devices to take and store photographs or video recordings of themselves with their co-conspirators and with contraband including narcotics, currency and firearms. Narcotics traffickers also use the GPS or location applications of these devices, which can reveal their whereabouts when they conducted or arranged narcotics related activities or travel. In addition, narcotics traffickers also use these devices to store information related to the financial transactions that occur during the course of their narcotics trafficking, such as drug ledgers and financial accounts and transactions. In my experience, the devices used by narcotics traffickers often contain evidence relating to their narcotics trafficking activities including, but not limited to, contact lists, lists of recent call activity, stored text and voice mail messages, photographs and video recordings, GPS and location information, and financial accounts and records.

5. I further know that some devices utilize subscriber identity module ("SIM") cards. A SIM card is a chip that is used to authenticate a device to a network. The SIM card generally contains subscriber information, authentication information, and may contain contacts and encryption information. The portability of SIM cards in some devices allows a user to easily change devices, while maintaining the same telephone number, by removing the card from one device and inserting it into another. While SIM cards may have the capability to store some of the evidence described above, the storage capacity of devices tends to far exceed that of SIM cards. What information is stored on the SIM card, on the device, or is stored in both locations varies depending on the user-defined settings on the device and the memory capacity of the SIM card. Accordingly, information pertaining to drug trafficking activity may be located on both the SIM card itself, as well as the device in which the SIM card was inserted.
6. Additionally, I know based on my training and experience that drug traffickers often have in their possession firearms and ammunition to protect themselves, their drugs and the proceeds derived from the distribution of drugs from individuals who seek to rob them or from competing drug traffickers.
7. The following information is based upon my personal knowledge as well as information provided by other federal, state or local officers and is presented as probable cause to search a black Samsung cellular telephone with unknown number ( the "Subject Telephone") to include any SIM card found in or with the Subject Telephone, which was seized from Jesus Pena ("Pena") after he was arrested by the Lea County Drug Task Force ("LCDTF") on December 11, 2019.
8. The request to search the Subject Telephone is based on the following facts:

On August 7, 2019, at approximately 11:22 a.m., Pena was stopped by the Lea County Sheriff's Office for a speeding violation. At the time of the stop, Pena was the driver and sole occupant of a gold Chevrolet Silverado bearing NM license plate 245WJZ, registered to "Thomas Dean Foster" at 3803 N Dal Paso, Hobbs, NM. A drug-detecting canine alerted to the vehicle during an open air



sniff of the vehicle, Deputies also received consent from Pena to search the vehicle. A search of the vehicle revealed 5,024 grams of a crystal-like substance that field tested positive for the properties of methamphetamine, approximately 274 grams of a brown substance that field tested positive for the properties of heroin, and approximately 129 grams of suspected fentanyl. According to the DEA laboratory results, the brown substance was confirmed to be heroin and had a net weight of 252.6 grams and the blue pills were confirmed to be 120.2 grams of fentanyl. Two cell phones were located in the vehicle and later searched pursuant to search warrants. One of the cell phones was passcode protected and agents were unable to search that cell phone. However, agents located evidence of drug trafficking activities on the other cell phone, including several messages between Pena and his source of supply in Mexico, discussing sending money to the source in Mexico as well as Pena obtaining another shipment of methamphetamine and heroin.

On August 18, 2019, at approximately 11:24 p.m., a red Mustang bearing Mexican license plate tag VHT653A was stopped by an Arizona DPS Officer for a traffic violation. Pena was the driver and sole occupant of the red Mustang. A consent search of the vehicle revealed .986 kilograms of a substance that field-tested positive for heroin and 43 grams of suspected fentanyl. Pena was arrested and charged in state court with offenses involving controlled substances. A cell phone was located in the vehicle and later searched pursuant to a search warrant. Messages related to drug trafficking were located on the phone.

On October 17, 2019, agents conducting surveillance observed a maroon Ford Mustang travelling eastbound west of Tatum, NM. Agents observed the Ford Mustang travel on indirect routes through Tatum not common for normal commuter traffic through Tatum. Furthermore, in Lovington, NM, the Mustang travelled on an indirect route towards Hobbs, NM. Based on my training and experience, I believe Pena, who was later as identified as the driver and sole occupant of the Mustang, was travelling on indirect routes to see if he was being followed by law enforcement. Shortly thereafter, Pena was stopped by law enforcement for a traffic violation. Deputies identified Pena as the driver and sole occupant. Pena produced a foreign identification with the name "Francisco Javier Figueroa Portillo," but displayed a photograph of Pena. After confronting Pena regarding the fictitious name, Pena confirmed his true identity as "Jesus Pena." Pena was released from the scene. I believe based on my training and experience that Pena provided a fictitious name to law enforcement because Pena continued to be involved in illegal activities. Deputies observed Pena in possession of a cell phone during the traffic stop.

On Wednesday, December 11, 2019, U.S. Magistrate Judge Gregory J. Fouratt authorized an arrest warrant for Pena based on a criminal complaint charging Pena with possession with intent to distribute a controlled substance, in violation of 21 U.S.C. 841, based on the August 7, 2019 traffic stop described above.

On Wednesday, December 11, 2019, agents arrested Pena in Hobbs, New Mexico. The Subject Telephone was found on Pena's person when he was arrested. Based on my training, experience, and knowledge of this investigation, I believe that Pena has continued to use a cell phone to coordinate his drug trafficking activities, including the Subject Telephone and that evidence of his drug trafficking activities will be located on the Subject Telephone.

The Subject Telephone is currently in the custody of the DEA in Las Cruces, New Mexico.

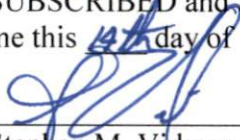
9. Based on the above information, there is probable cause to believe that evidence of violations of 21 U.S.C. §§ 841 and 846 are located in the Subject Telephone. Therefore, I respectfully request that this Court issue a search warrant for the Subject Telephone more particularly described in Attachment A, authorizing the seizure and examination of the items described in Attachment B.

Dated this 14 day of January, 2020 .



Mitchell Noel  
DEA Special Agent

SUBSCRIBED and SWORN to before  
me this 14 day of January, 2020.



Stephan M. Vidmar  
United States Magistrate Judge